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(e) This amendment becomes effective on September 21, 1995.

Issued in Renton, Washington, on August 11, 1995.

**S.R. Miller,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
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## Office of the Secretary

**14 CFR Parts 200, 201, 203, 204, 206, 215, 232, 271, 272, 291, 294, 296, 297, 298, 300, 313, 324, 325, 372, 379, 398, and 399**

[Docket No. OST-95-397]

RIN 2105-AC-27

## Aviation Economic Rules

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** The Department is amending various provisions regarding aviation economic rules in order to eliminate obsolete provisions and correct outdated organizational and statutory references.

**EFFECTIVE DATE:** The rule shall become effective on September 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Woods, Air Carrier Fitness Division, X-56, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366-9721.

**SUPPLEMENTARY INFORMATION:** In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." In response to that directive, the Department has undertaken a review of its aviation economic regulations as contained in 14 CFR Chapter II. This rule is one result of those efforts. Subsequent rulemakings will address other regulations.

We had conducted a review of a number of our aviation economic regulations in 1992 and eliminated Parts 202, 231, 263, 288 and 292 and revised Parts 200, 201, 203, 204, 206, 232, 291,

294, 296, 297, 298, and 372 at that time (see 57 FR 38761, Aug. 27, 1992, and 57 FR 40097, Sept. 2, 1992). We reexamined the rules we revised in 1992 as part of our current regulatory review and found that they and a number of other regulations (including Parts 215, 271, 272, 300, 313, and 398) now require only minor changes to eliminate obsolete provisions and to correct outdated titles of Department organizations and officials, and definitions and other terminology necessitated by legislative changes, including the revision and recodification of the Federal Aviation Act within Subtitle VII of Title 49 of the United States Code (Transportation) by action of Pub. L. 103-272, enacted July 5, 1994.

Part 398 is being amended in order to incorporate the service upgrades for "basic" essential air service contained in the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223, December 30, 1987). In general, the upgrades consist of (a) service with 15-seat or larger aircraft, (b) service with pressurized aircraft in cases where such service is regularly operated at altitudes exceeding 8,000 feet, (c) service to a large or medium hub, (d) service with no more than one intermediate stop, (e) seating capacity based on an average load factor of 60 percent, and (f) a provision that flights be operated at reasonable times, taking into account the needs of passengers with connecting flights. The Department actually implemented the required upgrades during Fiscal Year 1992 when Congress appropriated the necessary program funds. We are now formalizing those requirements in the Department's regulations. Finally, Pub. L. 100-223 also contained provisions for a higher level of service called "enhanced" essential air service. Because "enhanced" service has not been funded or implemented, however, we are not incorporating its provisions within Part 398 at this time.

In addition, Parts 324 and 379, and several sections in Parts 325 and 399 are being eliminated due to obsolescence.

Part 324 contains procedures for establishing final subsidy rates for air carriers providing temporary, compulsory service at small communities under 49 U.S.C. 41734 in cases where the rates would be applied retroactively—i.e., when the period of compulsory service has already begun or has concluded. Part 324 was established to compensate carriers for losses after the fact. Subsequent revision of the governing statute, however, permits the Department to establish such compensation prospectively under

the existing provisions contained in 14 CFR Part 271 at the beginning of the period of compulsory service. Because the Department now practices prospective ratemaking routinely, Part 324 is no longer necessary and is being eliminated.

Part 325 contains general guidelines for the Department's establishment of communities' essential air service determinations under 49 U.S.C. 41733. We are eliminating § 325.7 through § 325.9, which establish a three-member panel and special procedures for handling appeals. That process has become increasingly unwieldy and unresponsive. Without the appeal process, communities can directly seek review of such Department actions under § 302.37—Petitions for Reconsideration or Review by the DOT Decisionmaker. We expect that this change will considerably improve the Department's response time by streamlining the process and removing a bureaucratic layer between communities and the DOT decisionmaker.

Part 379 was established by the CAB to ensure that no person, on the grounds of race, color or natural origin, would be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the CAB. The Civil Aeronautics Board Sunset Act of 1984 (P.L. 98-443) transferred that agency's remaining authority to the Department as of January 1, 1985. The CAB regulations implementing Title VI of the Civil Rights Act of 1964 were virtually identical to those implemented by the Department under 49 CFR Part 21. Under the circumstances, the old CAB regulations are redundant, and Part 379 is being eliminated.

We are also removing three sections of Part 399 (§§ 399.20, .38, and .90) that are no longer needed. Section 399.20 is a policy statement issued by the CAB covering procedures for processing applications of long-haul general commodities motor carriers and railroads for authorization to act as air freight forwarders. U.S. companies proposing to operate as air freight forwarders are no longer required to file applications for such authority, in accordance with the blanket exemption granted by § 296.10. Foreign companies proposing to act as air freight forwarders file applications that are processed in accordance with Part 297. Therefore, § 399.20 may be removed. Section 399.38 concerns the establishment of temporary subsidy rates for air carriers serving small communities under 49 U.S.C. 41734 in cases where subsidy

payments are deemed necessary for the continuation of service until final rates are established at a later date. As a practical matter, the Department now routinely establishes all rates as final. Therefore, section 399.38 is no longer necessary. Section 399.90 states the CAB's policy on making public interest determinations concerning non-transport activities of air carriers that received mail transport subsidy under former section 406 of the Federal Aviation Act. Carriers no longer receive subsidy for transporting mail; therefore, the Department no longer makes public interest determinations concerning their non-transport activities. Section 399.90 can thus be eliminated.

We have also identified certain regulations that require substantive revision (including Parts 205, 207, 208, 212, 302, 323, 380, and 385), which will be treated in separate rulemakings in the near future.

#### **Executive Order 12866 (Regulatory Planning and Review)**

The Department has analyzed the economic and other effects of the proposed amendment and has determined that they are not "significant" within the meaning of Executive Order 12866. The amendment will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

#### **DOT Regulatory Policies and Procedures**

The amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of eliminating obsolete requirements, correcting out-of-date references, and enhancing the organization of the regulations used by the Department to administer its aviation economic regulatory functions.

The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required.

#### **Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities. For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) as small entities for purposes of the Regulatory Flexibility Act. Based upon this evaluation, the Department certifies that the amendment would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12612 (Federalism)**

These amendments have been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the amendments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendments will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **National Environmental Policy Act**

The Department has also analyzed the amendments for the purpose of the National Environmental Policy Act. The amendments will not have any significant impact on the quality of the human environment.

#### **Paperwork Reduction Act**

There are no reporting or recordkeeping requirements associated with the amendments.

#### **Notice and Opportunity for Public Comment Unnecessary**

Under the Administrative Procedure Act (5 U.S.C. § 553), the Department determines that notice and an opportunity for public comment are impracticable, unnecessary, and contrary to the public interest. The amendments made in this document are ministerial, removing obsolete and redundant material or making minor technical and terminology changes. These changes will have no substantive impact, and the Department would not anticipate receiving meaningful comments on them. Comment is therefore unnecessary, and it would be

contrary to the public interest to delay unnecessarily this effort to eliminate or revise outdated rules.

#### **List of Subjects**

##### *14 CFR Part 200*

Air transportation.

##### *14 CFR Part 201*

Air carriers, Reporting and recordkeeping requirements.

##### *14 CFR Part 203*

Air carriers, Air transportation, Foreign relations, Insurance, Reporting and recordkeeping requirements.

##### *14 CFR Part 204*

Air carriers, Reporting and recordkeeping requirements.

##### *14 CFR Part 206*

Air carriers, Emergency medical services, News media.

##### *14 CFR Part 215*

Air carriers, Reporting and recordkeeping requirements, Trade names

##### *14 CFR Part 232*

Administrative practice and procedure, Air carriers, Postal Service.

##### *14 CFR Part 271*

Air carriers, Grant programs—transportation.

##### *14 CFR Part 272*

Air carriers, Grant programs—transportation, Pacific Islands Trust Territory.

##### *14 CFR Part 291*

Administrative practice and procedure, Air carriers, Reporting and recordkeeping requirements.

##### *14 CFR Part 294*

Air taxis, Canada, Charter flights, Reporting and recordkeeping requirements.

##### *14 CFR Parts 296 and 297*

Air carriers, Freight forwarders.

##### *14 CFR Part 298*

Air taxis, Alaska, Canada, Insurance, Reporting and recordkeeping requirements.

##### *14 CFR Part 300*

Administrative practice and procedure, Conflict of interests.

##### *14 CFR Part 313*

Air carriers, Energy conservation.

##### *14 CFR Part 324*

Administrative practice and procedure, Air carriers, Grant

programs—transportation, Reporting and recordkeeping requirements.

**14 CFR Part 325**

Administrative practice and procedure, Air transportation, Intergovernmental relations, Reporting and recordkeeping requirements.

**14 CFR Part 372**

Charter flights, Military air transportation, Reporting and recordkeeping requirements, Surety bonds.

**14 CFR Part 379**

Administrative practice and procedure, Civil rights.

**14 CFR Part 398**

Air transportation.

**14 CFR Part 399**

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

**Final Rule**

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 200—[AMENDED]**

1. The authority citation for part 200 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 413, 415, 417, 461.

**§ 200.1 [Amended]**

2. In § 200.1 introductory text and in paragraphs (d) and (e), remove the word “Act” and add, in its place, the word “Statute”; add new paragraphs (f) and (g) to read as follows:

**§ 200.1 Terms and definitions.**

\* \* \* \* \*

(f) *Statute* when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

(g) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

**PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE—[AMENDED]**

3. The heading of part 201 is revised to read as set forth above.

4. The authority citation for part 201 is revised to read as follows:

**Authority:** 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

**§ 201.1 [Amended]**

5. In § 201.1(a), remove the words “section 401 of the Federal Aviation Act and for domestic all-cargo air service certificates under section 418 of the Act, or amendments thereof,” and add, in their place, the words “section 41102 of the Statute and for interstate all-cargo air transportation certificates under section 41103 of the Statute”.

**§ 201.4 [Amended]**

6. In § 201.4(c), remove the words “and overseas”; remove the words “section 401” where they appear twice, and add, in their place, the words “section 41102 of the Statute”; remove the words “domestic all-cargo air transportation under section 418” and add, in their place, the words “interstate all-cargo air transportation under section 41103 of the Statute”.

**§ 201.6 [Amended]**

7. In § 201.6, remove the words “section 401 or section 418 of the Act” and add, in their place, the words “section 41102 or section 41103 of the Statute”.

**§ 201.7 [Amended]**

8. In § 201.7(a), remove the words “title IV of the Act” and add, in its place, the word “Statute”; remove the words “section 401(g) of the Act” and add, in their place, the words “section 41110 of the Statute”.

9. In § 201.7(d), remove the word “service” and add, in its place, the word “transportation”; remove the word “domestic” and add, in its place, the word “interstate”.

10. In § 201.7(e), remove the words “Regulatory Analysis Division” and add, in their place, the words “Special Authorities Division”.

**PART 203—[AMENDED]**

11. The authority citation for part 203 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 413, 415, 417.

**§ 203.3 [Amended]**

12. In § 203.3, remove the words “Regulatory Analysis Division” and add, in their place, the words “Special Authorities Division”.

**PART 204—[AMENDED]**

13. The authority citation for part 204 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 417.

**§ 204.1 [Amended]**

14. In § 204.1 remove the word “point” and add, in its place, the word “place”.

15. and 16. In § 204.2, paragraphs (a), (f), and (i) are removed; paragraphs (e), (k), (l), (m), (n), and (o) are redesignated paragraphs (d), (i), (j), (k), (l), and (m), respectively; paragraphs (b), (c), (d), (g), (h), and (j) are redesignated paragraphs (a), (b), (c), (e), (f), and (g), respectively, and revised and paragraph (h) is added to read as follows:

**§ 204.2 Definitions.**

\* \* \* \* \*

(a) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. *Certificated carriers* are those that hold certificate authority.

(c) *Citizen of the United States* means:

- (1) An individual who is a citizen of the United States;
- (2) A partnership each of whose partners is an individual who is a citizen of the United States; or
- (3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

\* \* \* \* \*

(e) *Eligible place* means a place in the United States that—

- (1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;
- (2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and
- (3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

(f) *Essential air service* is that air transportation which the Department has found to be essential under

Subchapter II of Chapter 417 of the Statute.

(g) *Fit* means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) *Interstate air transportation* means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

\* \* \* \* \*

#### § 204.3 [Amended]

17. In § 204.3(o), remove the word “Act” both times it appears and add, in its place, the word “Statute”.

18. The heading of § 204.4 is revised to read as follows:

#### § 204.4 Carriers proposing to provide essential air service.

#### § 204.4 [Amended]

19. In § 204.4 introductory text, remove the word “transportation” and add, in its place, the word “service”.

#### PART 206—[AMENDED]

20. The authority citation for part 206 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 415, 417, 419.

#### § 206.1 [Amended]

21. In § 206.1, remove the words “section 401(a) of the Act” and add, in their place, the words “section 41101 of the Statute”; remove the words “section 403 of the Act” and add, in their place, the words “Chapter 415 of the Statute”.

#### § 206.2 [Amended]

22. In § 206.2, remove the words “the first sentence of section 405(b) of the Act” and add, in their place, the words “section 41902(b) of the Statute”.

#### § 206.3 [Amended]

23. In § 206.3, remove the words “sections 401(a) and 403 of the Act” and

add, in their place, the words “section 41101 and Chapter 415 of the Statute”.

#### § 206.4 [Amended]

24. In § 206.4, remove the words “section 403 of the Act” and add, in their place, the words “Chapter 415 of the Statute”.

#### § 206.5 [Amended]

25. In § 206.5(a) introductory text, remove the words “section 401 of the Act” and add, in their place, the words “section 41102 of the Statute”; remove the words “requirements of the Act” and add, in their place, the words “requirements of the Statute”; remove the words “section 407 of the Act” and add, in their place, the words “section 41708 of the Statute”.

26. In § 206.5(b), remove the words “section 403 or section 404(b) of the Act” and add, in their place, the words “Chapter 415 or section 41310 of the Statute”.

#### PART 215—[AMENDED]

27. The authority citation for part 215 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 413, 417.

#### PART 232—[AMENDED]

28. The authority citation for part 232 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 419.

#### § 232.1 [Amended]

29. In § 232.1 (a) and (b) introductory text, remove the words “section 405(b) of the Act” and add, in their place, the words “section 41902 of the Statute”.

#### § 232.4 [Amended]

30. In § 232.4 (a) and (b) introductory text, remove the words “section 405(b) of the Act” and add, in their place, the words “section 41902 of the Statute”.

#### PART 271—[AMENDED]

31. The authority citation for part 271 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 417.

#### §§ 271.3, 271.4, 271.5, 271.6, 271.7, 271.8 [Amended]

32. In §§ 271.3 introductory text, 271.4(a)(4)(ii), 271.4(b), 271.5(a)(2), 271.7(a), 271.8(a) introductory text, and 271.8(a)(3), remove the word “Board” and add, in its place, the word “Department”.

#### §§ 271.3, 271.4, 271.5, 271.6, 271.8 [Amended]

33. In §§ 271.3 introductory text, 271.3(c), 271.4(a) introductory text, 271.4(a)(4), 271.5(a) introductory text,

271.6, and 271.8(c), remove the word “transportation” and add, in its place, the word “service”.

#### §§ 271.3, 271.4, 271.5, 271.6, 271.7, 271.8 [Amended]

34. In §§ 271.3 introductory text, 271.3(a), 271.3(b), 271.3(c), 271.3(d), 271.4(a) introductory text, 271.4(a)(2)(i), 271.4(a)(4) introductory text where it appears twice, 271.4(a)(4)(ii), 271.5(a) introductory text, 271.5(a)(1), 271.5(a)(2), 271.6, 271.7(b)(1), 271.8(a)(1), 271.8(a)(2), 271.8(a)(4), and 271.8(c), remove the word “point” and add, in its place, the word “place”.

35. Section 271.1 is revised to read as follows:

#### § 271.1 Purpose.

This part establishes the guidelines required by 49 U.S.C. 41736 to be used by the Department in establishing the fair and reasonable amount of compensation needed to ensure the continuation of essential air service to an eligible place under 49 U.S.C. 41731 and 41734. These guidelines are intended to cover normal carrier selection cases and rate renewal cases, and not necessarily emergency carrier selection cases.

36. Section 271.2 is revised to read as follows:

#### § 271.2 Definitions.

As used in this part:

*Eligible place* means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

*Essential air service* is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

#### § 271.4 [Amended]

37. In § 271.4(a)(1)(i), remove the word “historic” and add, in its place, the word “historical”.

38. Paragraph (a)(2)(ii) of § 271.4 is revised to read as follows:

#### § 271.4 Carrier costs.

(a) \* \* \*

(2) \* \* \*

(ii) By comparing the carrier’s systemwide indirect operating expenses

to those submitted by the carrier for the eligible place; or

\* \* \* \* \*

39. Paragraph (c) of § 271.4 is removed.

#### § 271.6 [Amended]

40. In § 271.6, remove the words “not more than”.

41. In § 271.7, the introductory text of paragraph (b) is revised to read as follows:

#### § 271.7 Subsidy payout formula.

(a) \* \* \*

(b) While a carrier's subsidy rate will not vary even if actual revenues or costs differ from projections, the actual amount of each payment may vary depending on the following factors:

\* \* \* \* \*

#### § 271.7 [Amended]

42. In § 271.7(b)(3), remove the words “§ 271.4(c) or”.

43. In § 271.7, paragraph (c) is removed; paragraph (d) is redesignated paragraph (c).

#### § 271.8 [Amended]

44. In § 271.8(a)(5), correct the word “othe” to read “other”.

#### § 271.9 [Amended]

45. In § 271.9(a)(2), remove the words “part 379 of this chapter” and add, in their place, the words “49 CFR part 21”.

46. In § 271.9(a)(3), after the number “1973” add the punctuation and words “, 49 CFR part 27,”.

47. In § 271.9(c), remove the words “§§ 379.4 and 382.21” and add, in their place, the words “49 CFR parts 20, 21, 27 and 29, and § 382.21”.

### PART 272—ESSENTIAL AIR SERVICE TO THE FREELY ASSOCIATED STATES

48. The heading of part 272 is revised to read as set forth above.

#### PART 272—[AMENDED]

49. The authority citation for part 272 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 402, 416, 461, 1102; sec. 221(a)(5) of the Compact of Free Association, and paragraph 5 of Article IX of the Federal Programs and Services Agreement in implementation of that Compact (Pub. L. 99–239; Pub. L. 99–658); Pub. L. 101–219.

#### §§ 272.1–272.10, 272.12 [Amended]

50. In §§ 272.1 where it occurs the second time, 272.2 where it occurs twice, 272.3 section title, 272.3(a), 272.4, 272.5 section title, 272.5(a), 272.5(b), 272.6 section title, 272.6(a) introductory text, 272.6(b) where it

occurs the first time, 272.6(c), 272.7(a)(1), 272.7(a)(2) where it occurs twice, 272.8(a) where it occurs three times, 272.8(c), 272.8(d), 272.9 section title, 272.9(a) where it occurs twice, 272.9(b) where it occurs twice, 272.9(c), 272.9(d), 272.9(e), 272.9(f) introductory text, 272.9(f)(1), 272.9(f)(2) where it occurs twice, 272.9(g), 272.9(h) introductory text, 272.9(h)(2), 272.9(h)(3), 272.9(h)(5)(i) where it occurs twice, 272.10(a) introductory text, 272.10(a)(1), 272.10(b), 272.10(c), and 272.12 first paragraph, remove the word “transportation” or “Transportation” and add, in its place, the word “service”.

#### §§ 272.1–272.3, 272.5–272.9 [Amended]

51. In §§ 272.1, 272.2 where it occurs twice, 272.3 section title, 272.3(a), 272.3(b) where it occurs twice, and 272.5(a), remove the word “points” and add, in its place, the word “places”; in §§ 272.6(a) introductory text, 272.7(a) introductory text where it occurs twice, 272.7(a)(1), 272.7(a)(2), 272.8(a) where it occurs five times, 272.8(c) where it occurs twice, 272.8(d), 272.9(a) where it occurs twice, 272.9(b) where it occurs twice, 272.9(c), remove the word “point” and add, in its place, the word “place”.

#### §§ 272.2, 272.6 [Amended]

52. In §§ 272.2 and 272.6(b), remove the initial capitalization from the words “Essential Air”.

53. The title of § 272.4 is revised to read as follows:

#### § 272.4 Applicability of procedures and policies under 49 U.S.C. 41731–42.

#### § 272.4 [Amended]

54. In § 272.4, remove the words “section 419 of the Federal Aviation Act” and add, in their place, the words “49 U.S.C. 41731–42.”.

#### § 272.5 [Amended]

55. In § 272.5, paragraph (a) is removed; the paragraph designation “(b)” in paragraph (b) is removed; in formerly designated paragraph (b), remove the words “section 419(f)” and add, in their place, the words “49 U.S.C. 41737”; remove the words “§ 325.7 (except §§ 325.7(a)(2) and 325.7(b)(9));”.

#### § 272.8 [Amended]

56. In § 272.8(b), remove the number “324” and add, in its place, the number “271”.

### PART 291—CARGO OPERATIONS IN INTERSTATE AIR TRANSPORTATION

57. The heading of part 291 is revised to read as set forth above.

58. The authority citation for part 291 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 415, 417.

59. Section 291.1 is revised to read as follows:

#### § 291.1 Applicability.

This part applies to cargo operations in interstate air transportation by air carriers certificated under section 41102 or 41103 of the Statute. It also applies to applicants for an all-cargo air transportation certificate under section 41103 of the Statute.

60. Section 291.2 is revised to read as follows:

#### § 291.2 Definitions.

*All-cargo air transportation* means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

*Interstate air transportation* means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

*Section 41102 carrier* means an air carrier certificated under section 41102 of the Statute to transport persons, property and mail or property and mail only.

*Section 41103 carrier* means an air carrier holding a certificate issued under section 41103 of the Statute to provide all-cargo air transportation.

61. The title of Subpart B is revised to read as follows:

#### Subpart B—All-Cargo Air Transportation Certificates

62. The title of Subpart C is revised to read as follows:

#### Subpart C—General Rules for All-Cargo Air Transportation

63. Section 291.20 is revised to read as follows:

**§ 291.20 Applicability.**

The rules in this subpart apply to cargo operations in interstate air transportation performed by air carriers certificated under sections 41102 or 41103 of the Statute. Section 41103 carriers that operate passenger-only or combination aircraft under section 41102, part 298 of this chapter, or other Department authority, must comply with the rules in this subpart in connection with cargo operations in interstate air transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier may operate a particular flight under either a section 41102 certificate or a section 41103 certificate, the flight is presumed to be operated under the carrier's section 41103 authority.

**§ 291.22 [Amended]**

64. In § 291.22, remove the words "all-cargo air service in domestic cargo transportation" and add, in their place, the words "all-cargo air transportation".

**§ 291.23 [Amended]**

65. In § 291.23(a), remove the words "domestic cargo" and add, in their place, the words "interstate air"; remove the word "Board" and add, in its place, the word "Department".

66. In § 291.23(b), remove the words "domestic cargo" and add, in their place, the words "interstate air".

**§ 291.24 [Amended]**

67. In § 291.24, remove the words "domestic cargo" where they appear twice, and add, in place of the first occurrence, the words "cargo operations in interstate air", and add, in place of the second occurrence, the words "interstate air".

68. The title of Subpart D is revised to read as follows:

**Subpart D—Exemptions for Cargo Operations in Interstate Air Transportation**

**§ 291.30 [Amended]**

69. In § 291.30, remove the words "domestic cargo" and add, in their place, the words "cargo operations in interstate air".

70. Section 291.31 is revised to read as follows:

**§ 291.31 Exemptions from the Statute.**

(a) Each section 41102 or 41103 air carrier providing cargo operations in interstate air transportation is, with respect to such transportation, exempted from the following portions of the Statute only if and so long as it complies with the provisions of this part and the conditions imposed herein, and

to the extent necessary to permit it to conduct cargo operations in interstate air transportation:

(1) Sections 41310, 41705,

(2) Chapter 415, and

(3) Chapter 419 for all-cargo operations under section 41103.

(b) Each air carrier providing cargo operations in interstate air transportation under section 41103 of the Statute is exempted from the provisions of section 41106(a) of the Statute to the extent necessary to permit it to compete for and operate cargo charters in interstate air transportation for the Department of Defense under contracts of more than 30 days' duration.

(c) The Department of Defense is exempted from section 41106(a) of the Statute to the extent necessary to permit it to negotiate and enter into contracts of more than 30 days' duration with any section 41103 carrier for operation of cargo charters in interstate air transportation.

**§§ 291.32, 291.33, 291.34 [Removed]**

71. Sections 291.32, 291.33 and 291.34 are removed.

**§ 291.41 [Amended]**

72. In § 291.41(a), remove the words "domestic cargo" and add, in their place, the words "cargo operations in interstate air"; remove the words "section 401" and add, in their place, the words "section 41102".

73. In § 291.41(b), remove the words "domestic cargo" and add, in their place, the words "cargo operations in interstate air"; remove the words "section 418" and add, in their place, the words "section 41103".

74. Section 291.41(c), remove the word "domestic cargo" where it appears twice, and add, in their place, the words "cargo operations in interstate air"; remove the words "section 418" and add, in their place, the words "section 41103".

75. The title of § 291.42 is revised to read as follows:

**§ 291.42 Section 41103 financial and statistical reporting.**

76. In § 291.42(a)(1), remove the words "section 418" where they appear twice, and add, in their place, the words "section 41103".

77. In § 291.42(b) introductory text, remove the words "section 418" and add, in their place, the words "section 41103".

78. Section 291.50 is revised to read as follows:

**§ 291.50 Enforcement.**

In case of any violation of any of the provisions of the Statute, or this part, or

any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute.

**PART 294—[AMENDED]**

79. The authority citation for part 294 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 417.

**§ 294.1 [Amended]**

80. In § 294.1, remove the words "Federal Aviation Act" and add, in their place, the words "Subtitle VII of Title 49 of the United States Code (Transportation)"; remove the words "provisions of the Act" and add, in their place, the words "provisions of the Statute".

**§ 294.2 [Amended]**

81. In § 294.2, remove paragraph (a); paragraphs (b) through (j) are redesignated paragraphs (a) through (i).

**§ 294.10 [Amended]**

82. In § 294.10 introductory text, remove the word "Act" and add, in its place, the word "Statute".

83. In § 294.10(a), remove the words "Section 402" and add, in their place, the words "section 41302".

84. In § 294.10(b), remove the words "Section 404(a)(2)" and add, in their place, the words "section 41501".

85. In § 294.10(c), remove the words "Section 404(b)" and add, in their place, the words "section 41310".

**§§ 294.20, 294.21, 294.22, 294.40 [Amended]**

86. In §§ 294.20 introductory text, 294.20(b), 294.21(b), 294.21(e)(1), 294.22 introductory text, and 294.40, remove the words "Regulatory Analysis Division" and add, in their place, the words "Special Authorities Division".

**§ 294.30 [Amended]**

87. In § 294.30(c), remove the words "section 402 of the Act"; and add, in their place, the words "section 41302 of the Statute"; remove the words "section 416 of the Act" and add, in their place, the words "section 41701 of the Statute"; remove the words "section 402" and add, in their place, the words "section 41302".

**§ 294.50 [Amended]**

88. In § 294.50(b), remove the words "section 402" and add, in their place, the words "section 41302".

**§ 294.70 [Amended]**

89. In § 294.70, remove the word "Act" the first two times it occurs and add, in its place, the word "Statute"; remove the words "sections 1002 and 1007 of the Act before the Department or" and add, in their place, the words "section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before"; remove the words "section 901(a) of the Act" and add, in their place, the words "section 46301 of the Statute"; remove the words "section 902(a) of the Act" and add, in their place, the words "section 46316 of the Statute".

**PART 296—[AMENDED]**

90. The authority citation for part 296 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 417.

**§ 296.1 [Amended]**

91. In § 296.1, remove the words "Federal Aviation Act" and add, in their place, the words "Subtitle VII of Title 49 of the United States Code (Transportation)".

92. The title of § 296.10 is revised to read as follows:

**§ 296.10 Exemption from the Statute.****§ 296.10 [Amended]**

93. In § 296.10(a) introductory text, remove the words "Title IV of the Act" and add, in their place, the words "the Statute".

94. In § 296.10(a)(1), remove the words "Subsection 403(b)(2)" and add, in their place, the words "Section 41510(b)"; remove the words "section 403(b)(2)" and add, in their place, the words "section 41510(b)".

95. In § 296.10(a)(2), remove the words "Section 404(a)" and add, in their place, the words "Section 41702".

96. In § 296.10(a)(3), remove the words "Subsection 404(b)" and add, in their place, the words "Section 41310".

97. In § 296.10(a)(4), remove the words "Section 407(a)" and "407(e)" and add, in their place, the words "Section 41708" and "41709", respectively.

98. In § 296.10(a)(5), remove the words "Section 411" and add, in their place, the words "Section 41712".

99. In § 296.10(a)(6), remove the words "Section 413" and add, in their place, the words "Section 40102(b)".

100. In § 296.10(a)(7), remove the words "Section 415" and add, in their place, the words "Section 41711".

101. In § 296.10(d), remove the words "section 403 of the Act" and add, in their place, the words "Chapter 415 of the Statute".

**§ 296.20 [Amended]**

102. In § 296.20, remove the word "Act" the first two times it occurs and add, in its place, the word "Statute"; remove the words "sections 1002 and 1007 of the Act before the Department or" and add, in their place, the words "section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before"; remove the words "section 901(a) of the Act" and add, in their place, the words "section 46301 of the Statute".

**PART 297—[AMENDED]**

103. The authority citation for part 297 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 417.

**§ 297.1 [Amended]**

104. In § 297.1, remove the words "the Act" and add, in its place, the words "Subtitle VII of Title 49 of the United States Code (Transportation)"; remove the punctuation and word " , overseas,".

**§ 297.2 [Amended]**

105. In § 297.2, remove the words "and overseas".

106. The title of § 297.10 is revised to read as follows:

**§ 297.10 Exemption from the Statute.****§ 297.10 [Amended]**

108. In § 297.10(a) introductory text, remove the words "the Act" and add, in their place, the words "the Statute".

109. In § 297.10(a)(1), remove the words "Section 402" and add, in their place, the words "Section 41302".

110. In § 297.10(a)(2), remove the words "Section 403(a) and 403(b)(1)" and add, in their place, the words "Sections 41504 and 41510(a)".

111. In § 297.10(a)(3), remove the words "Section 403(b)(2)" and add, in their place, the words "Section 41510(b)".

112. In § 297.10(a)(4), remove the words "Subsection 404(a)(2)" and add, in their place, the words "Section 41501".

113. In § 297.10(a)(5), remove the words "or overseas" where they appear twice; remove the word "Act" and add, in its place, the word "Statute".

114. In § 297.10(a)(6), remove the words "Subsection 404(b)" and add, in their place, the words "Section 41310".

115. In § 297.10(b), remove the words "section 403 of the Act" and add, in their place, the words "Chapter 415 of the Statute".

**§ 297.12 [Amended]**

116. In § 297.12(a), remove the words "section 401, 402, 416, or 418 of the

Act" and add, in their place, the words "section 41102, 41103, 41302, or 41701 of the Statute".

117. In §§ 297.12(b) and 297.12(c), remove the words "and overseas".

**§§ 297.20, 297.21, 297.24 [Amended]**

118. In §§ 297.20(b) (two occurrences), 297.21, and 297.24(a), remove the words "Regulatory Analysis Division", and add, in their place, the words "Special Authorities Division".

**§ 297.22 [Amended]**

119. In § 297.22(e), remove the words "section 402 of the Act" and add, in their place, the words "section 41302 of the Statute".

**§ 297.50 [Amended]**

120. In § 297.50, remove the word "Act" the first two times it occurs and add, in its place, the word "Statute"; remove the words "sections 1002 and 1007 of the Act before the Department or" and add, in their place, the words "section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before"; remove the words "section 901(a) of the Act" and add, in their place, the words "section 46301 of the Statute"; remove the words "section 902(a) of the Act" and add, in their place, the words "section 46316 of the Statute".

**PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS**

121. The heading of part 298 is revised to read as set forth above.

122. The authority citation for part 298 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 417.

**§ 298.1 [Amended]**

123. In § 298.1, remove the words "Title IV of the Federal Aviation Act" and add, in their place, the words "Subtitle VII of Title 49 of the United States Code (Transportation)"; before the words "air transportation" add the words "interstate and/or foreign"; remove footnote 1.

124. In § 298.2, paragraph (a) is removed; paragraphs (b) through (x) are redesignated paragraphs (a) through (w); newly designated paragraphs (b), (d-1), and (d-2), are revised to read as follows:

**§ 298.2 Definitions.**

\* \* \* \* \*

(b) *Air Transportation* means interstate air transportation, foreign air transportation, or the transportation of

mail by aircraft as defined by the Statute.<sup>1</sup>

\* \* \* \* \*

(d-1) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(d-2) *Certificated carrier* means an air carrier holding a certificate issued under section 41102 of the Statute.

\* \* \* \* \*

#### § 298.2 [Amended]

125. In newly designated § 298.2(w), remove the words “section 401 of the Act” and add, in their place, the words “section 41102 of the Statute”.

#### §§ 298.11, 298.13 [Amended]

126. In §§ 298.11 introductory text and 298.13, remove the words “Title IV of the Act” and add, in their place, the words “the Statute”.

127. In § 298.11(a), remove the words “Section 401(a)” and add, in their place, the words “Section 41101”.

128. In § 298.11(b)(1), remove the words “Section 403” and add, in their place, the words “Section 41504”; remove the words “section 403 of the Act” and add, in their place, the words “Chapter 415”.

129. In § 298.11(c) introductory text, remove the words “Section 404(a)” and add, in their place, the words “Section 41702”.

<sup>1</sup> “Interstate air transportation” is defined in section 41012(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. NOTE: Operations wholly within the geographic limits of a single State are not considered “interstate air transportation” if in those operations the carrier transports no more than a *de minimus* volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

“Foreign air transportation” is defined in section 40102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

Air transportation also is defined to include “the transportation of mail by aircraft.” Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

130. In § 298.11(d), remove the words “Section 404(b)” and add, in their place, the words “section 41310”.

131. In § 298.11(e), remove the words “Section 405(b)” and add, in their place, the words “Section 41902”.

132. In § 298.11(f), remove the words “Sections 407(b), (c), and (d)” and add, in their place, the words “Section 41708”.

#### § 298.21 [Amended]

133. In § 298.21, paragraph (c)(1) footnote 6 and paragraph (c)(4), remove the words “Regulatory Analysis Division” and add, in their place, the words “Special Authorities Division”.

134. In § 298.21(d), after the words “scheduled passenger service” add the words “as a commuter air carrier”; remove the word “point” and add, in its place, the word “place”.

#### § 298.36 [Amended]

135. In § 298.36(a), remove the words “section 604 of the Act” and add, in their place, the words “section 44702 of the Statute”.

#### § 298.62 [Amended]

136. In § 298.62(c)(1), remove the words “section 419 of the Federal Aviation Act” and add, in their place, the words “section 41732 of the Statute”.

#### § 298.80 [Amended]

137. In § 298.80, remove the word “Act” the first two times it occurs, and add, in its place, the word “Statute”; remove the words “sections 1002 and 1007 of the Act before the Department or” and add, in their place, the words “section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before”; remove the words “section 901(a) of the Act” and add, in their place, the words “section 46301 of the Statute”; remove the words “section 902(a) of the Act” and add, in their place, the words “section 46316 of the Statute”.

#### PART 300—[AMENDED]

138. The authority citation for part 300 is revised to read as follows:

**Authority:** 18 U.S.C. 20(b)(c); 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 449, 461, 463.

#### § 300.0 [Amended]

139. In § 300.0, remove the words “resulting from the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended by the Civil Aeronautics Board Sunset Act of 1984” and add, in their place, the words “involving aviation economic and enforcement proceedings”.

#### § 300.1 [Amended]

140. At the beginning of § 300.1, remove the words “Under the transfer of authority under section 1601(b)(1) of the Federal Aviation Act of 1958, certain of DOT’s functions” and add, in their place, the words “Certain of DOT’s functions involving aviation economic and enforcement proceedings”.

#### §§ 300.2, 300.3 [Amended]

141. In §§ 300.2(c)(8) and 300.3(a)(5), remove the words “section 419 of the Federal Aviation Act, 49 U.S.C. 1389” and add, in their place, the words “49 U.S.C. 41731–42.”.

#### § 300.4 [Amended]

142. In § 300.4(c), remove the words “sections 401 or 402 of the Act” and add, in their place, the words “49 U.S.C. 41102 and 41302”.

#### § 300.10 [Amended]

143. In § 300.10, remove the words “or the Civil Aeronautics Board” where they appear in the title and in the text of the section.

#### § 300.10a [Amended]

144. At the beginning of § 300.10a, remove the words “Due to the transfer of authority under 1601(b)(1) of the Federal Aviation Act of 1958, the” and add, in their place, the word “The”.

#### § 300.14 [Amended]

145. In § 300.14, remove the words “Civil Aeronautics Board members and employees and” in the title of the section; remove the words “the Board or”, and “Board member or Board employee or” in the text of the section.

146. Section 300.20(d) is revised to read as follows:

#### § 300.20 Violations.

\* \* \* \* \*

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of 49 U.S.C. 46301. The violator may also be subject to a proceeding brought under 49 U.S.C. 46101 before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance with civil penalties which have been imposed.

#### PART 313—[AMENDED]

147. The authority citation for part 313 is revised to read as follows:

**Authority:** 42 U.S.C. 6362(b), 49 U.S.C. Chapter 401.

#### §§ 313.1, 313.2, 313.7 [Amended]

148. In §§ 313.1(c), 313.2(d) and 313.7(b), remove the word “EPCA” and



add, in its place, the words “42 U.S.C. 6362”.

#### § 313.1 [Amended]

149. In § 313.1(a), remove the words “The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., hereinafter “EPCA”)” and add, in their place, the words “Chapter 77 (Energy Conservation) of Title 42 (The Public Health and Welfare);” remove the words “section 382 of EPCA” and “Section 382(b) of EPCA” and add, in their place, the words “42 U.S.C. 6362” and “42 U.S.C. 6362(b)”, respectively.

150. In § 313.1(b), remove the words “Section 204(a) of the Federal Aviation Act of 1958, as amended (hereinafter “Act”)” and add, in their place, the words “Section 40113 of Subtitle VII of Title 49 of the United States Code (Transportation) (“the Statute”);” remove the word “Act” at the end of the paragraph, and add, in its place, the word “Statute”.

#### § 313.2 [Amended]

151. In § 313.2(a), remove the word “EPCA” and add, in its place, the words “Chapter 77 of Title 42”; remove the words “section 102 of the Federal Aviation Act (49 U.S.C. 1302)” and add, in their place, the words “section 40101 of the Statute”; remove the word “Act” in the last sentence and add, in its place, the word “Statute”.

152. In § 313.2(d), remove the word “Act” and add, in its place, the word “Statute”.

153. In § 313.3, paragraphs (a) and (d) are removed; paragraphs (b), (c), (e), and (f) are redesignated paragraphs (a), (b), (c), and (d); new paragraph (e) is added to read as follows:

#### § 313.3 Definitions.

\* \* \* \* \*

(e) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

154. Paragraph (b)(1) of § 313.4 is revised to read as follows:

#### § 313.4 Major regulatory actions.

\* \* \* \* \*

(b) \* \* \*

(1) Tariff suspension orders under section 41509 of the Statute, emergency exemptions or temporary exemptions not exceeding 24 months under section 40109 of the Statute and other proceedings in which timely action is of the essence;

\* \* \* \* \*

155. In § 313.4(c)(1), remove the word “Act” and add, in its place, the word “Statute”.

#### § 313.7 [Amended]

156. In § 313.7(a), remove the words “detailed environmental negative declaration” and add, in their place, the words “finding of no significant impact”; remove the words “Procedural Regulations” and add, in their place, the word “procedures”; remove the words “procedures of DOT’s NEPA regulations” and add, in their place, the words “DOT’s NEPA procedures”.

#### PART 324—[REMOVED]

157. Part 324 is removed.

#### PART 325—[AMENDED]

158. The authority citation for part 325 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 417.

#### §§ 325.7, 325.8, 325.9 [Removed]

159. Sections 325.7, 325.8, and 325.9 are removed.

#### PART 372—[AMENDED]

160. The authority citation for part 372 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 413, 417.

#### § 372.1 [Amended]

161. In § 372.1, remove the words “section 401 of the Act” and add, in their place, the words “section 41102 of Title 49 of the United States Code (“the Statute”)”.

#### § 372.2 [Amended]

162. In § 372.2 definition of *Overseas military personnel charter operator*, remove the words “section 101(13) of the Federal Aviation Act (49 U.S.C. 1301(13))” and add, in their place, the words “section 40102(a)(15) of the Statute”.

163. In § 372.2, add a definition at the end of the section to read as follows:

#### § 372.2 Definitions.

\* \* \* \* \*

*Statute* when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

#### § 372.4 [Amended]

164. In § 372.4, remove the word “Act” the first two times it occurs, and add, in its place, the word “Statute”; remove the words “sections 1002 and 1007 of the Act before the Department or” and add, in their place, the words “section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before”; remove the words “section 901(a) of the Act” and add, in their place, the words “section 46301 of the Statute”; remove the words “section 902(a) of the Act” and add, in

their place, the words “section 46316 of the Statute”.

#### § 372.10 [Amended]

165. In § 372.10, remove the words “section 401 of the Act” and add, in their place, the words “section 41102 of the Statute”.

#### § 372.30 [Amended]

166. In § 372.30(a), remove the words “Regulatory Analysis Division” and add, in their place, the words “Special Authorities Division”.

#### Appendix A to Part 372 [Amended]

167. In the ninth paragraph of Appendix A, which begins with the words “This bond is effective on . . .”, remove the opening quotation marks and the words “Regulatory Analysis Division (P-57)” and add, in their place, the words “Special Authorities Division (X-57)” with no quotation marks.

#### PART 379—[REMOVED]

168. Part 379 is removed.

169. and 170. Part 398 is revised to read as follows:

#### PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF BASIC ESSENTIAL AIR SERVICE

Sec.

- 398.1 Purpose.
- 398.2 Number and designation of hubs.
- 398.3 Specific airports.
- 398.4 Equipment.
- 398.5 Frequency of flights.
- 398.6 Seat guarantees.
- 398.7 Timing of flights.
- 398.8 Number of intermediate stops.
- 398.9 Load factor standards.
- 398.10 Overflights.
- 398.11 Funding reductions.

**Authority:** 49 U.S.C. Chapters 401, 417; Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223, Dec. 30, 1987).

#### § 398.1 Purpose.

The purpose of this part is to establish general guidelines for the determination of basic essential air service for each eligible place under 49 U.S.C. 41731 and 41732. Procedures for the determination of the essential air service level for a place are contained in part 325 of this chapter.

#### § 398.2 Number and designation of hubs.

(a) *What is a hub?* The Department considers hubs as belonging to any one of three classifications:

(1) A *large* hub is a place accounting for at least 1.00 percent of the total enplanements in the United States;

(2) A *medium* hub is a place accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States; and

(3) A *small* hub is a place accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

(b) *How many hubs?* (1) As a general matter, the Department will require service to one large or medium hub.

(2) In Alaska or when the nearest large or medium hub is more than 400 miles from the eligible place, the Department may instead require service to a small hub or nonhub.

(3) In some cases, the Department may require service to two hubs, of which at least one will be a large or medium hub. The Department will require service to two hubs if an eligible place has close commercial, geographic, and political ties to both hubs and if there is sufficient traffic from the eligible place to support two round trips a day to both hubs. If traffic is not sufficient, the Department may require one round trip a day to both hubs if the community requests such service.

(4) In no event will essential air service consist of service to more than two hubs.

(c) *Which hub?* (1) In designating hubs, the Department will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;

(ii) The commercial, geographic, and political ties of candidate hubs to the eligible place;

(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and designation data;

(iv) The distance of candidate hubs from the eligible place; and

(v) The size of candidate hubs. Large size will be a positive factor, but principally as substantiating the access and community-ties factors.

(2) For Alaska, rather than requiring service to a hub, the Department may instead require that service from an eligible place be provided to a nearby focal point for traffic which, in turn, has service to a hub.

### **§ 398.3 Specific airports.**

(a) At an eligible place, essential air service may be specified as service to a particular airport. In the case of hyphenated places, essential air service will be specified as service to more than one airport only if clearly necessary and if the multi-airport service is economically feasible and justified on the basis of traffic levels at those airports.

(b) At a hub, essential air service is not usually specified as service to a particular airport.

### **§ 398.4 Equipment.**

(a) Except in Alaska, service will be provided by aircraft offering at least 15 passenger seats, unless:

(1) Average daily enplanements at the place did not exceed 11 passengers for any fiscal year from 1976 through 1986;

(2) The requirement would necessitate the payment of compensation in a fiscal year for service at the place when compensation would otherwise not be necessary; or

(3) The affected community agrees in writing to the use of smaller aircraft to provide service at the place.

(b) The aircraft must have at least two engines and use two pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least two engines and using two pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(c) The aircraft must be pressurized when the service regularly involves flights above 8,000 feet in altitude.

(d) All aircraft must meet the applicable safety standards of the Federal Aviation Administration.

(e) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

### **§ 398.5 Frequency of flights.**

(a) Except in Alaska, at least two round trips each weekday and two round trips each weekend.

(b) In Alaska, a level of service at least equal to that provided in 1976, or two round trips each week, whichever is greater, except that the Department and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(c) An essential air service level may be set at more than that stated in paragraphs (a) and (b) of this section if:

(1) Historical traffic data and studies of traffic-generating potential for the place indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that place;

(2) More flights are needed because the capacity available to the eligible place is being shared with traffic destined for an intermediate stop or for a place beyond the eligible place;

(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the place;

(4) More flights are needed in order to ensure adequate connecting opportunities as provided for by § 398.7; or

(5) For Alaska, the appropriate state agency agrees that more frequent service

is needed to accommodate cargo traffic with the aircraft used at the eligible place.

(d) For eligible places where traffic levels vary substantially with the season, a two-tier level of essential air service may be established with required flight frequencies changing accordingly.

### **§ 398.6 Seat guarantees.**

(a) The number of seats guaranteed at the eligible place will be sufficient to accommodate the estimated passenger traffic at an average load factor of 60 percent, except that an average load factor of 50 percent will be used when service is provided with aircraft having fewer than 15 passenger seats.

(b) Only under unusual circumstances will an eligible place's essential air service level be set at a number of flights that will accommodate more than 40 passengers a day in each direction (a total of 80 inbound and outbound passengers). Generally, 40 passengers can be accommodated by guaranteeing 67 seats a day in each direction (a total of 134 inbound and outbound seats).

(c) The Department may guarantee an eligible place more than 67 seats a day if:

(1) The number of stops between or beyond the eligible place and the hub results in available aircraft capacity being shared with passengers at those other places;

(2) The distance between the eligible place and the designated hub requires the use of large aircraft;

(3) The eligible place has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity; or

(4) Other unusual circumstances warrant guaranteeing the eligible place more than 67 seats a day.

### **§ 398.7 Timing of flights.**

To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (i.e., to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

### **§ 398.8 Number of intermediate stops.**

(a) Except in Alaska, no more than one intermediate stop is permitted in

providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify nonstop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

#### **§ 398.9 Load factor standards.**

The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:

(a) The place is served by the carrier as part of a linear route; or

(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

#### **§ 398.10 Overflights.**

The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:

(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department's essential air service determination for that place;

(b) Circumstances beyond the carrier's control prevent it from landing at the eligible place;

(c) The flight involved is not in a market where the Department has determined air service to be essential; or

(d) The eligible place is a place in Alaska for which the Department's essential air service determination permits the overflight.

#### **§ 398.11 Funding reductions.**

(a) If, in any fiscal year, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported essential air service at the places receiving such service, and

Congress provides no statutory direction to the contrary, appropriations shall not be available for essential air service to otherwise eligible places within the 48 contiguous States and Puerto Rico that have a rate of subsidy per passenger in excess of \$200.00, or are located:

(1) Less than 70 highway miles from the nearest large or medium hub airport;

(2) Less than 55 miles from the nearest small hub airport; or

(3) Less than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day in the most recent year for which the Department has obtained complete data.

(b) The rate of subsidy per passenger shall be calculated by dividing the annual subsidy in effect as of July 1 of the prior fiscal year by the total origin-and-destination traffic during the most recent year for which the Department has obtained complete data.

#### **PART 399—[AMENDED]**

171. The authority citation for part 399 is revised to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 413, 415, 417, 419, 461.

#### **§ 399.20, 399.38, 399.90 [Removed]**

172. Sections 399.20, 399.21, 399.38, and 399.90 are removed.

#### **§ 399.21 [Amended]**

173. In § 399.21, remove the words "section 401 of the Act" and add, in their place, the words "section 41102 of Title 49 of the United States Code".

Issued in Washington DC, on August 14, 1995.

**Mark L. Gerchick,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 95-20502 Filed 8-21-95; 8:45 am]

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#### **DEPARTMENT OF THE TREASURY**

##### **Internal Revenue Service**

##### **26 CFR Parts 1, 20, 25 and 602**

[TD 8612]

RIN 1455-AM85

##### **Income, Gift and Estate Tax**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the income tax imposed under chapter 1, the estate tax imposed under chapter 11, and the gift tax imposed under chapters 12 and 14

of the Internal Revenue Code of 1986. Changes to the marital deduction provisions of the estate and gift tax chapters were made by the Technical and Miscellaneous Revenue Act of 1988. Further amendments were made by the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. These final regulations will provide guidance needed to comply with the changes to the marital deduction provisions of the estate and gift tax chapters.

**DATES:** These regulations are effective August 22, 1995.

These regulations apply to decedents dying and to gifts made after August 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hurwitz, 202-622-3090, not a toll-free number.

#### **SUPPLEMENTARY INFORMATION:**

##### **Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1360. The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

##### **Background**

A notice of proposed rulemaking was published in the **Federal Register** (58 FR 305), on January 5, 1993, reflecting amendments made to the Code by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) (the 1988 Act), the Revenue Reconciliation Act of 1989 (Pub. L. 101-239) (the 1989 Act), and the Revenue Reconciliation Act of 1990 (Pub. L. 101-508) (the 1990 Act). The 1988, 1989, and 1990 Acts impose restrictions on the allowance of the estate and gift tax marital deduction where the surviving spouse (in the case of a transfer at death) or the donee spouse (in the case of a lifetime transfer) is not a citizen of the United States. In addition, the gift tax annual exclusion allowable in the case of a transfer to a